

say for certain whether it was headed for approval or denial. At bottom, Sibbison and others involved in the application's consideration said the DOI personnel who participated in the decision – including Duffy, herself, Michael Anderson, Skibine and lawyers from the Solicitor's Office – would have liked to have found a way to grant the application, but could not do so because of the local opposition. Sibbison, Manuel and Skibine stated that the internal discussions during the spring of 1995 focused on how best to articulate that decision to deny the application.

According to most witnesses, discussions within the Department were not focused on how to conform the decision with prior decisions, but rather how to render a unique decision that avoided setting undesired precedent. Sibbison, Skibine and others did not want to send a message that non-Indian local opposition could simply veto trust acquisitions. There was equal concern – expressed by Hartman, Manuel and others – to avoid sending the message that tribes with existing casinos could bar other tribes from competing in their markets.

Hartman told investigators he would not have denied the application based on a finding of “detriment,” but that substantial changes would have been needed to the agreements between the tribes and the non-Indian partners to meet the “best interests” test. Drafts of his June 8 memo corroborate his testimony that he held this same opinion in spring 1995. He believed, however, that the non-Indian partners eventually would make the concessions required because of the lack of alternatives for the failing track.

Skibine told investigators that he had an open mind initially about the application, but came to the view that it was appropriate to deny the application because of local opposition. Skibine said that he knew Duffy believed that the application should be denied, and cannot say